U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

FEB 15 2011

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: On August 27, 2010, the Administrative Appeals Office (AAO) affirmed the decision of the director to revoke the previously approved petition. The matter is now before the AAO again on appeal. The appeal will be rejected, or in the alternative, will be summarily dismissed.

The petitioner is an information-technology consulting company seeking to permanently employ the beneficiary in the United States as an information systems manager pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director initially approved the petition on December 29, 2006. However, on May 14, 2008, the director reopened the matter and sent the petitioner a notice of intent to revoke (NOIR), advising the petitioner to submit additional evidence and noting various inconsistencies in the record. The petitioner was given 30 days to respond. No response was submitted within 30 days after the issuance of the NOIR, and the director revoked the approval of the petition.

The petitioner subsequently filed a timely appeal on August 8, 2008.

On August 27, 2010, the appeal was dismissed, and the director's decision to revoke the approval of the petition was affirmed. The reasons for the dismissal of the appeal are set forth in the AAO's decision.

The petitioner subsequently filed another appeal on September 29, 2010 and indicated only that it would be sending a brief and/or evidence to the AAO within 30 days.

The AAO, however, does not exercise appellate jurisdiction over its own decisions. The AAO only exercises appellate jurisdiction over matters that were specifically listed at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).[1] For instance, in the event that a petitioner disagrees with an AAO decision to dismiss an appeal, the petitioner can file a motion to reopen or a motion to reconsider in accordance with 8 C.F.R. § 103.5. In this matter, the AAO would have had jurisdiction over a timely motion if the petitioner had checked box D ("I am filing a motion to reopen a decision"), box E ("I am filing a motion to reconsider a decision"), or box F ("I am filing a motion to reopen and a motion to reconsider a decision") on the Form I-290B, Notice of Appeal or Motion. In this case, the petitioner checked box B ("I am filing an appeal"),

[1] In the process of reorganizing the immigration regulations, the Department of Homeland Security (DHS) deleted the list of the AAO's appellate jurisdiction that was previously found at former 8 C.F.R. § 103.1(f)(3)(iii) (2002). 68 FR 10922 (March 6, 2003). DHS replaced the appellate jurisdiction provision with a general delegation of authority, granting U.S. Citizenship and Immigration Services (USCIS) the authority to adjudicate the appeals that had been previously listed in the regulations as of February 28, 2003. *See* DHS Delegation No. 0150.1 para. (2)(U) (Mar. 1, 2003); 8 C.F.R. § 103.3(a)(iv). As a result, there is no generally accessible list of the AAO's jurisdiction that may be cited in immigration proceedings or in federal court.

instead. Therefore, the appeal is improperly filed and must be rejected, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(A)(*1*).

In addition, even if the AAO were to have jurisdiction over an appeal from its own decision, the appeal in this matter would have been summarily dismissed, since the petitioner's appeal does not identify specifically any erroneous conclusion of law or statement of fact for the appeal. 8 C.F.R. § 103.3(a)(1)(v). Although the petitioner indicates that it would submit a brief and/or additional evidence within 30 days, no such evidence or brief has been submitted. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with filing an appeal, the petitioner in this case has not made any request to extend the 30-day deadline. Accordingly, even if the AAO had jurisdiction over the appeal, the appeal would have been summarily dismissed.

Finally, even if the appeal were treated as a motion, it would be dismissed for failing to meet applicable requirements. 8 C.F.R. § 103.5(a)(4). Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or USCIS policy. As noted above, the petitioner stated that a brief and/or additional evidence would be submitted in 30 days. Over thirty days have passed, and no brief and/or evidence has been submitted or received. Even if a brief and/or evidence had been submitted, it could not have been considered in the context of a motion. Evidence and briefs must be submitted with the motion. Unlike appeals, the regulation pertaining to motions to reopen or reconsider does not permit briefs and/or evidence to be filed subsequently. Accordingly, as the filing does not meet the requirements of 8 C.F.R. §§ 103.5(a)(2) or (3), it would have been dismissed pursuant to 8 C.F.R. § 103.5(a)(4), if it were treated as a motion.[2]

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[2] It is noted that the petitioner has been debarred pursuant to §§ 212(n)(2)(C)(i) and (ii) of the Act and that, as a result, USCIS may not approve a nonimmigrant or immigrant petition with respect to the petitioner during the two-year debarment period from July 31, 2010 through July 30, 2012. [redacted] The petition may not be approved, and the instant appeal may not be sustained, for this additional reason. The AAO conducts appellate review on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

Therefore, as the appeal was not properly filed, it will be rejected, or in the alternative, summarily dismissed, or, if a motion, dismissed for failing to meet applicable requirements.

ORDER: The appeal is rejected. The AAO's previous decision dated August 27, 2010 shall not be disturbed.